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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JOHN STEVE ARCHER, Plaintiff and Respondent, v. JEFF ARCHER, Defendant and Appellant.	B254750 (Los Angeles County Super. Ct. No. LC089564)

APPEAL from orders of the Superior Court of Los Angeles Country, Huey P. Cotton, Judge. Affirmed.

Law Offices of Andrew M. Wyatt and Andrew M. Wyatt, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

This convoluted case arose from disputes between two brothers over several parcels of real property they jointly owned. Plaintiff John Archer sued defendant Jeff Archer in two lawsuits, which were consolidated. Jeff filed for bankruptcy protection, but the parties agreed to waive the bankruptcy stay and submit their disputes to binding arbitration. When the arbitrator issued an award largely in favor of John, Jeff tried to invoke protection of the bankruptcy stay he had waived; John moved for relief from the stay. The bankruptcy court ruled in favor of John, retroactive to the date the petition in bankruptcy was filed. State court proceedings resumed, leading to net judgments in favor of John. Jeff appealed, and we affirmed. Jeff then filed a motion in state court to enforce portions of the arbitration award. John responded with a motion for sanctions against Jeff and his attorney. The trial court denied Jeff's motion and granted John's motion, imposing sanctions of $9,999.99 on Jeff and his attorney.

We affirm the orders.

FACTUAL AND PROCEDURAL SUMMARY

Disputes arose between plaintiff and defendant about the management of four parcels of real property they jointly owned: the McCormick property, the Mason property, the Winnetka property, and the Vanowen property. As a result, plaintiff filed two lawsuits in April 2010.

The first involved the McCormick property, which had been sold to a third party by the time plaintiff filed his lawsuit. It alleged defendant was indebted to plaintiff for unaccounted profits, sought an accounting, and requested an award of compensatory and punitive damages. The second suit raised claims regarding defendant's mismanagement of the Mason, Winnetka, and Vanowen properties. It also sought an accounting, an order of partition and sale of the properties, and compensatory and punitive damages. The two actions eventually were consolidated, and the parties stipulated to submit them to binding arbitration.

In June 2011, defendant filed a petition in bankruptcy, which would have resulted in an automatic stay of the arbitration proceedings. However, defendant and his attorney

waived the stay and proceeded with arbitration. The arbitrator issued a partial award resolving credibility issues in plaintiff's favor and declaring plaintiff to be the prevailing party. At this point, defendant attempted to invoke the protection of the bankruptcy stay he and his attorney previously had waived. Plaintiff filed a motion for relief from the automatic stay. The bankruptcy court granted the motion and applied relief, retroactive to the date of defendant's bankruptcy filing.

The arbitrator's final award granted plaintiff $372,244.32, which included $52,500 in punitive damages for fraud. The award of punitive damages was based on defendant's "willful and deliberate attempts to defraud [p]laintiff." Plaintiff was given the option to purchase the Mason and Winnetka properties from defendant by using $155,000 and $127,500 of his award, respectively, and he elected to do so. The Vanowen property was awarded to defendant, and plaintiff was ordered to apply $29,996.01 of his award to cover the anticipated shortfall from a future sale of the property or to cover the deficiency of the property's value. Defendant was ordered to "assume and release [plaintiff] from any responsibility for any promissory notes, liens, trust deeds, encumbrances or mortgages" associated with the Vanowen property. Plaintiff then moved the trial court for an order confirming the arbitrator's award. The motion was granted and judgments for the consolidated cases were entered in April 2012. Defendant appealed, and we affirmed the trial court's judgments. (*Archer v. Archer* (Sept. 25, 2013, B241435/ B241436) [nonpub. opn.].)

While that appeal was pending, defendant received his bankruptcy discharge. He then filed a motion with the bankruptcy court to dismiss plaintiff's state actions based upon the discharge. The motion was denied.

Defendant then filed a motion to enforce portions of the arbitration award in the trial court, arguing that the court should enforce only those portions favorable to him. Plaintiff opposed the motion and filed his own motion for an order imposing monetary sanctions against defendant.

The trial court denied defendant's motion and granted plaintiff's motion, imposing $9,999.99 in sanctions against defendant and his attorney. The trial court noted the "long

history of defendant resisting enforcement of the arbitration award, such that this court has had to rule at least three times on the enforceability of the award . . . , and the bankruptcy court has had to confirm the enforceability of the award at least once." It also stated that defendant's arguments were not supported by evidence, "and in some cases not supported by law or common sense." It concluded the motion was "interposed for an improper purpose and is not warranted by existing law or by a non-frivolous argument for the extension or change in existing law, and is lacking in evidentiary support or likely evidentiary support."

This timely appeal followed.[1]

DISCUSSION

I

A. *Bankruptcy Discharge and Proof of Claim*

Defendant argues for selective enforcement of the arbitration award on the ground that defendant's obligations to plaintiff under the award have been discharged. We are not persuaded. Defendant omits the fact that the bankruptcy court has specifically granted plaintiff the right to enforce the arbitration award.

Defendant also claims plaintiff's failure to file a proof of claim in the bankruptcy action invalidates his portion of the arbitration award. In support of this argument, he points to the bankruptcy court's statement that plaintiff had not filed a proof of claim and that it is too late to do so. However, defendant omits the portion of the ruling that states, "[d]ebtor's chapter 7 is a no asset chapter 7 wherein the Chapter 7 Trustee filed a report of no distribution." When, as here, a "'no asset'" report is filed in a Chapter 7 case, "'the

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[1] This appeal concerns two postjudgment orders, each of which is appealable. The order imposing sanctions is appealable pursuant to Code of Civil Procedure section 904.1, subdivision (a)(12). The order denying defendant's motion is appealable because the motion raises arguments different from those raised in defendant's appeal from the judgments, and seeks to enforce the arbitration award. (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 651, 652 [postjudgment order is appealable only if it raises issues "different from those arising from an appeal from the judgment" and the order "'affect[s] the judgment or relate[s] to it by enforcing it or staying its execution'"].)

filing of a proof of claim serves no practical purpose since there will be no distribution from the estate in which to participate. [Citation.]'" (*In re Kronemyer* (Bankr. 9th Cir. 2009) 405 B.R. 915, 921.) Defendant does not explain why plaintiff was required to file a proof of claim in defendant's no asset bankruptcy proceeding. The bankruptcy court, as well as the trial court, rejected defendant's claim on this ground. We agree that plaintiff's failure to file a proof of claim has no effect on the arbitrator's award.

B. *Defendant's Representations Regarding the Mason, Winnetka, and Vanowen Properties*

Defendant contends he is owed additional money by plaintiff pursuant to the arbitration award. In his briefing, defendant claims the Mason and Winnetka properties have not been sold and argues he is entitled to half of the value of these properties. The record does not support this argument. Plaintiff exercised his right under the arbitration award to purchase the Mason and Winnetka properties before defendant received his bankruptcy discharge. The judgment of the trial court confirmed this when it awarded plaintiff the entire legal and equitable fee simple title to the Mason and Winnetka properties and awarded defendant the Vanowen property. The record reflects that quitclaim deeds to the Mason and Winnetka properties were signed over to plaintiff on January 14, 2013—before defendant received his discharge. Simply put, at the time of defendant's bankruptcy discharge, the property dispute had been resolved and defendant no longer had an interest in the Mason and Winnetka properties. Defendant's argument that he is still entitled to half of the value of the Mason and Winnetka properties is unsupported by the record.

Defendant also claims he is entitled to the rental income plaintiff has collected on the Mason property from November 2009 to November 2013, when the underlying motion was filed. This argument also is unsupported by the record. The rental income from November 2009 to December 2011 was accounted for in the $23,000 awarded to defendant in the arbitration award. That amount was offset against plaintiff's award of $395,244.32, reducing it to $372,244.32. As to the rental income from January 2012

forward, the arbitration award states that, "[a]s a direct result of Respondent's non compliance with [a prior partial arbitration award,] . . . the Claimant shall not be responsible for any rent that would have been due and payable from January 2012 onward."

Defendant also argues plaintiff has failed to pay mortgage, taxes, and homeowner fees on the Vanowen property and has been "pocketing the rents." We note that the arbitration award ordered defendant to assume and release plaintiff "from any responsibility for any promissory notes, liens, trust deeds, encumbrances or mortgages . . . associated with the Vanowen property." Defendant does not mention this provision of the award and does not explain why plaintiff is responsible for such expenses. As for the claim that plaintiff has been collecting rent money on the property, defendant fails to support it by citing to evidence in the record. As appellate courts are not required to "search through the record in an effort to discover the point purportedly made," defendant's contention lacks foundation and is forfeited. (*In re S.C.* (2006) 138 Cal.App.4th 396, 406.)

II

In response to defendant's underlying motion, plaintiff filed a motion for an order imposing monetary sanctions for violation of Code of Civil Procedure section 128.7[2] against defendant and his attorney. The court granted the motion and imposed $9,999.99 in sanctions. Defendant contends there is no support for plaintiff's motion and, even if sanctions were warranted, the amount imposed was excessive.

Section 128.7, subdivision (b) provides that, by presenting to the court any "pleading, petition, written notice of motion, or other similar paper," the attorney or the unrepresented party is certifying that the filing is not presented "primarily for an improper purpose," that its legal arguments are not frivolous, that the factual allegations have or are likely to have evidentiary support after discovery, and that the denials of

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[2] Subsequent statutory references are to the Code of Civil Procedure.

factual contentions are reasonably based on a lack of information or belief. Subdivision (c) of this section allows the court to impose an appropriate sanction upon the attorneys or parties for violation of subdivision (b). We review a trial court's decision to award sanctions for abuse of discretion. (*Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 167.)

In light of the trial court's notation of defendant's multiple misrepresentations, omissions, and repeated attempts to avoid enforcement of the arbitration award, we find no abuse of discretion in the court's decision to impose monetary sanctions upon defendant and his attorney. Defendant correctly argues that monetary sanctions may not be awarded against a represented party if the basis for the sanctions is that the legal arguments made were frivolous under section 128.7, subdivision (b)(2). (§ 128.7, subd. (d)(1).) However, the trial court granted sanctions not only on a violation of section 128.7, subdivision (b)(2), but also on violations of (b)(1) and (b)(3). (See *Burkle v. Burkle* (2006) 144 Cal.App.4th 387, 402-403 [affirming award of sanctions against represented party and her attorney when trial court based its decision not only on subdivision (b)(2), but also subdivision (b)(1)].) The award of sanctions against defendant and his attorney was proper.

We also find no abuse of discretion in the amount of sanctions awarded. "A sanction imposed for violation of [section 128.7,] subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated." (§ 128.7, subd. (d).) The trial court described the lengths to which the defendant went to avoid enforcement of the arbitration award and the baseless nature of his arguments in the underlying motion. It is clear from the trial court's ruling that it was seeking to deter defendant from further attempts to do so. Given that plaintiff requested $10,210 in sanctions and that defendant, with his attorney, repeatedly made unfounded arguments and misrepresentations to the court, we cannot say that the award of $9,999.99 in sanctions was an abuse of discretion. Defendant cites no authority suggesting otherwise. We affirm the trial court's order granting sanctions of $9,999.99 against defendant and his attorney.

DISPOSITION

The orders are affirmed. Defendant is to bear his own costs on appeal.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.